

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Tami Lynne Athens,

BKY 03-41543 (NCD)

Debtor.

Chapter 7

John W. Bunch,

ADV 03-4147

Plaintiff,

vs.

Tami Lynne Athens,

Defendant.

**NOTICE OF HEARING AND MOTION
FOR SANCTIONS UNDER RULE 7037,
OR IN THE ALTERNATIVE, FOR LEAVE TO FILE AMENDED COMPLAINT**

TO: The Debtor and other entities listed in Local Rule 1204(a).

1. John W. Bunch ("Plaintiff") moves the Court for the relief requested below and gives notice of hearing.

2. The Court will hold a hearing on this motion on Wednesday, September 22, 2004 at 10:30 am in Courtroom No. 7 West, United States Courthouse, 300 S. Fourth Street, Minneapolis, Minnesota 55415.

3. Any response to this motion must be filed and delivered not later than 10:30 am on Monday September 20, 2004, which is three days before the time set for hearing (including intermediate Saturdays, Sundays and legal holidays), or filed and served by mail not later than September 15, 2004, which is seven days before the time set for hearing (including intermediate Saturdays, Sundays and legal holidays). **UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**

4. This Court has jurisdiction over this motion pursuant to 28 U.S.C. Sections 157 and 1334, Fed.R.Bankr.P. 5005 and Local Rule 1070-1. This proceeding is a core proceeding.

5. The original petition commencing this Ch. 7 case was filed on March 3, 2003. It was converted to a Ch. 13 case on April 29, 2004. Confirmation of Debtor's proposed Plan was denied after I objected on the basis that it was not filed in good faith. My objection was joined in and supported by the Ch. 13 Trustee, after which the Debtor consented. This case was re-converted to Ch. 7 on August 5, 2004. It is now pending in this Court.

6. This motion arises under 11 U.S.C. Sections 523 and 727, Bankruptcy Rules 7007 and 7037, and Local Rules 9006-1, 9013-1, 9013-2 and 9017-1. This motion is filed under Bankruptcy Rule 7037-1 and Local Rule 9006-1.

16-1

7. Plaintiff requests relief with respect to Defendant/debtor's failure and refusal to comply with the Order dated 1/20/04 ordering Defendant to answer Plaintiff's written discovery requests, and Defendant's failure to appear for deposition.

8. Plaintiff hereby certifies that he has in good faith conferred with Defendant/debtor's attorney, Mr. George Roberts, in an effort to obtain such discovery without further court action.

9. Pursuant to Local Rule 9013-2(a), the facts set forth in this motion have been verified and the motion is accompanied by a proposed order, memorandum, affidavit with exhibits, and proof of service.

WHEREFORE, Plaintiff moves the Court for an Order:

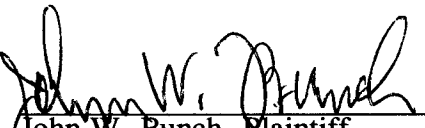
1. Imposing appropriate sanctions for Defendant/debtor's failure to comply with the Order dated 1/20/04; namely, entry of a default judgment against Defendant excepting Defendant's debt to Plaintiff under 11 U.S.C. 523(a)(2)(A).

2. Or, in the alternative, granting Plaintiff leave of Court to file and serve an amended complaint.

3. Requiring Defendant/debtor and/or his attorney to pay Plaintiff increased costs/attorneys fees of \$ 375 for the expense of bringing this motion, the expense of preparing for a deposition that Defendant did not attend, and the expense of attending another meeting of creditors and objecting to Debtor's Ch. 13 petition.

4. For such other relief as the Court deems appropriate.

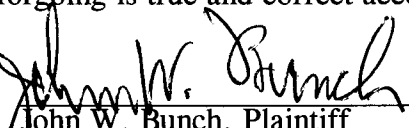
Dated: September 8, 2004


John W. Bunch, Plaintiff
attorney pro se, I.D. No. 135,823
2705 Xanthus Ln.
Plymouth, MN 55447
763/476-1724

Verification I, John W. Bunch, the moving party named in the forgoing notice of hearing and motion, declare under penalty of perjury that the forgoing is true and correct according to the best of my knowledge, information and belief.

Executed on September 8, 2004

bnmotion.doc


John W. Bunch, Plaintiff

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Tani Lynne Athens

BKY 03-41543 (NCD)

Debtor,

Chapter 7

John W. Bunch

ADV 03-4147

Plaintiff

vs.

Tami Lynne Athens,

Defendant

**Memorandum In Support of Plaintiff's Motion for Sanctions under Rule 7037,
or in the alternative, for Leave to File Amended Complaint**

Introduction

Plaintiff submits this Memorandum in support of his Motion for Sanctions for Defendant's failure to comply with the Order dated 1/20/04 ordering Defendant to answer Plaintiff's written discovery requests.

Background and Argument

The Order dated 1/20/04 required Defendant to answer certain interrogatories and provide certain requested documents by January 30, 2004. Defendant has failed and refused to comply with the Court's Order. No interrogatory answers have been received, nor have the requested documents. Defendant has a pattern of failing to cooperate with Court Orders, and is now in contempt of this Court. Further, Defendant failed and refused to appear for oral deposition. See attached Affidavit of John W. Bunch and exhibits. Defendant's continued lack of cooperation has prejudiced Plaintiff and necessitated this motion.

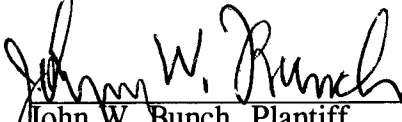
Authorities

The authorities for this motion are Federal Rules of Bankruptcy Procedure 7001, *et seq.*, particularly Rules 7026, 7000, 7033, 7034 and 7037; Federal Rule of Civil Procedure, particularly Rule 37(b)(2); Local Rule 9013; and related case law.

Conclusion

For the reasons set forth above, the Court should grant Defendant's motion. A proposed Findings of Fact, Conclusions of Law and Order is attached.

Dated: September 8, 2004


John W. Bunch, Plaintiff
attorney pro se, I.D. No. 135,823
2705 Xanthus Ln.
Plymouth, MN 55447
763/476-1724

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Tami Lynne Athens,
Debtor.

BKY 03-41543 (NCD)
Chapter 7

John W. Bunch,
Plaintiff,

ADV 03-4147

vs.

Tami Lynne Athens,
Defendant.

Affidavit of John W. Bunch

STATE OF MINNESOTA)
) SS:
COUNTY OF HENNEPIN)

John W. Bunch, being first duly sworn, on oath, submits this Affidavit in support of his Notice of Hearing and Motion For Sanctions, etc. herein.

1. Ex. A. attached hereto is a true and correct copy of the Court's Order dated 1/20/04 herein, which Defendant failed to obey.
2. Ex. B. attached hereto is a true and correct copy of Federal Rule of Civil Procedure 37(b)(2), made applicable to these proceedings by Federal Rule of Bankruptcy Procedure 7037.
3. As of to date, I have yet to receive any responses to my outstanding interrogatories and document requests, despite the Order dated 1/20/04.
4. Ex. C. attached hereto is a true and correct copy of the Notice of Deposition of Defendant and subpoena with proof of service dated 4/21/04 as served on Defendant's attorney.
5. Ex. D attached hereto is a true and correct copy of my follow up letter dated 4/26/04 to Defendant's attorney.
6. Neither Defendant nor her attorney appeared for the deposition scheduled for 5/3/04, thus causing me considerable inconvenience and expense preparing for it and arranging for a court reporter.
7. I do not believe Defendant has any intention whatsoever of cooperating with discovery as ordered because that will show that her petition is fraudulent and should be denied under 11 U.S.C. 727.
8. From past experience, I believe that Defendant knows that stonewalling and failing to cooperate in discovery can work in her favor and prejudice the other party, fully intending that result.

9. Ex. E attached hereto is a true and correct copy the Order For Disclosure dated 2/2/02 by the Hennepin County, Minnesota, District Court, ordering Defendant to complete a financial disclosure form in aid of execution of judgment, which Defendant failed to obey.

10. Ex. F. attached hereto is a true and correct copy of Notice of Taking Deposition of Tami L. Athens (in aid of execution of judgment) and Affidavit of Service dated 2/25/02, which Defendant failed to obey.

11. Ex. G. attached hereto is a true and correct copy of the Order dated 7/30/02 by the Hennepin County, Minnesota, District Court ordering Defendant (and her spouse Clark Ulysse) "to serve complete signed and sworn answers to my interrogatories (in aid of execution of judgment) by 8/2/02", which Defendant failed to obey.

12. Ex. H. attached hereto is a true and correct copy the Order For Disclosure dated 11/13/02 by the Hennepin County, Minnesota, District Court, ordering Defendant to complete a financial disclosure form in aid of execution of judgment, which Defendant failed to obey.

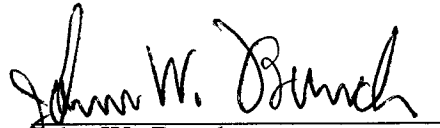
13. Defendant has shown a pattern of contempt for court Orders requiring her (and her spouse Clark Ulysse) to disclose information about her assets and financial affairs, both in this Court and Minnesota state court.

14. Ex. I. attached hereto is a true and correct copy of Debtor's Response to Objection to Confirmation dated 8/4/04, consenting to re-conversion to Ch. 7.

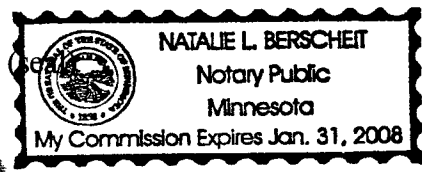
15. I believe Defendant is a vexatious litigant whose real purpose is delay and needless increase in the cost of litigation.

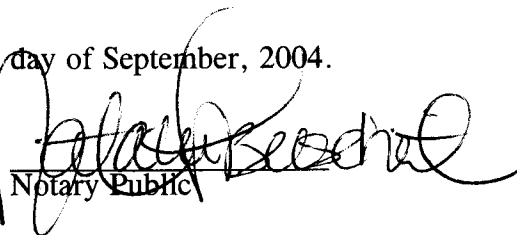
Further affiant sayeth naught.

Dated: September 8, 2004


John W. Bunch
2705 Xanthus Ln.
Plymouth, MN 55447
763/476-1724

Sworn to and subscribed before me this 8th day of September, 2004.




Natalie L. Berscheit
Notary Public

jack.doc

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

Re:

TAMI LYNNE ATHENS,

Debtor.

BKY No. 03-41543

Chapter 7

JOHN W. BUNCH,

Plaintiff,

ADV No. 03-4147

v.

ORDER

TAMI LYNNE ATHENS,

Defendant.

At Minneapolis, Minnesota, January 20, 2004.

Plaintiff's motion to compel the Defendant to respond to discovery came on before the undersigned on January 14, 2004. Appearances, if any, were as noted in the record. Upon all the files and proceedings herein, and the argument of counsel,

IT IS HEREBY ORDERED THAT:

1. Defendant shall answer interrogatories No. 11-14.
2. Defendant shall provide copies of her 2001 and 2002 federal and state income tax returns, including W2 and 1099 form.
3. Defendant shall provide the documents requested in Document Request No. 2 for the years 2001 and 2002.
4. Defendant shall provide the documents requested by Document Request No. 3 for the years 2001 and 2002.
5. Defendant shall provide the documents requested by Document Request No. 4.
6. Defendant shall provide the documents requested by Document Request No. 5.
7. Defendant shall provide the documents requested by Document Request No. 6 for the years 2001, 2002 and 2003.
8. Defendant's objection to Document Request No. 7 is SUSTAINED.
9. Defendant shall provide the documents requested by Document Request No. 8.
10. Defendant shall provide the documents requested by Document Request No. 9.
11. Defendant's objection to Document Request No. 10 is SUSTAINED.
12. Defendant's objection to Document Request No. 11 is SUSTAINED.

A.

13. Defendant shall provide the documents requested by Document Request No. 12.
14. Defendant shall provide the documents requested by Document Request No. 13.
15. Defendant's objection to Document Request No. 14 is SUSTAINED.
16. Defendant shall answer the interrogatories and produce the documents as ordered no later than January 30, 2004.
17. The court shall set the matter on for a pre-trial conference by separate order.
18. Plaintiff's requests for costs and attorney fees is DENIED.

/e/ Nancy C. Dreher
Nancy C. Dreher
Judge of Bankruptcy Court

e13-1

NOTICE OF ELECTRONIC ENTRY AND FILING ORDER OR JUDGMENT Filed and Docket Entry made on 1/21/04 Patrick G. De Wane, Clerk, By KK
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Rule 37

RULES OF CIVIL PROCEDURE

fording an opportunity to be heard, apportion the reasonable expenses incurred in relation to the motion among the parties and persons in a just manner.

(b) Failure to Comply With Order.

(1) **Sanctions by Court in District Where Deposition is Taken.** If a deponent fails to be sworn or to answer a question after being directed to do so by the court in the district in which the deposition is being taken, the failure may be considered a contempt of that court.

(2) **Sanctions by Court in Which Action is Pending.** If a party or an officer, director, or managing agent of a party or a person designated under Rule 30(b)(6) or 31(a) to testify on behalf of a party fails to obey an order to provide or permit discovery, including an order made under subdivision (a) of this rule or Rule 35, or if a party fails to obey an order entered under Rule 26(f), the court in which the action is pending may make such orders in regard to the failure as are just, and among others the following:

(A) An order that the matters regarding which the order was made or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order;

(B) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting that party from introducing designated matters in evidence;

(C) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party;

(D) In lieu of any of the foregoing orders or in addition thereto, an order treating as a contempt of court the failure to obey any orders except an order to submit to a physical or mental examination;

(E) Where a party has failed to comply with an order under Rule 35(a) requiring that party to produce another for examination, such orders as are listed in paragraphs (A), (B), and (C) of this subdivision, unless the party failing to comply shows that that party is unable to produce such person for examination.

In lieu of any of the foregoing orders or in addition thereto, the court shall require the party failing to obey the order or the attorney advising that party or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

(c) Failure to Disclose; False or Misleading Disclosure; Refusal to Admit.

(1) A party that without substantial justification fails to disclose information required by Rule 26(a) or 26(e)(1), or to amend a prior response to discovery as required by Rule 26(e)(2), is not, unless such failure is harmless, permitted to use as evidence at a trial, at a hearing, or on a motion any witness or information not so disclosed. In addition to or in lieu of this sanction, the court, on motion and after affording an opportunity to be heard, may impose other appropriate sanctions. In addition to requiring payment of reasonable expenses, including attorney's fees, caused by the failure, these sanctions may include any of the actions authorized under Rule 37(b)(2)(A), (B), and (C) and may include informing the jury of the failure to make the disclosure.

(2) If a party fails to admit the genuineness of any document or the truth of any matter as requested under Rule 36, and if the party requesting the admissions thereafter proves the genuineness of the document or the truth of the matter, the requesting party may apply to the court for an order requiring the other party to pay the reasonable expenses incurred in making that proof, including reasonable attorney's fees. The court shall make the order unless it finds that (A) the request was held objectionable pursuant to Rule 36(a), or (B) the admission sought was of no substantial importance, or (C) the party failing to admit had reasonable ground to believe that the party might prevail on the matter, or (D) there was other good reason for the failure to admit.

(d) **Failure of Party to Attend at Own Deposition or Serve Answers to Interrogatories or Respond to Request for Inspection.** If a party or an officer, director, or managing agent of a party or a person designated under Rule 30(b)(6) or 31(a) to testify on behalf of a party fails (1) to appear before the officer who is to take the deposition, after being served with a proper notice, or (2) to serve answers or objections to interrogatories submitted under Rule 33, after proper service of the interrogatories, or (3) to serve a written response to a request for inspection submitted under Rule 34, after proper service of the request, the court in which the action is pending on motion may make such orders in regard to the failure as are just, and among others it may take any action authorized under subparagraphs (A), (B), and (C) of subdivision (b)(2) of this rule. Any motion specifying a failure under clause (2) or (3) of this subdivision shall include a certification that the movant has in good faith conferred or attempted to confer with the party failing to answer or respond in an effort to obtain such answer or response without court action. In lieu of any order or in addition thereto, the court

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UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

In re:

Tami Lynne Athens

Debtor,

John W. Bunch

Plaintiff

BKY 03-4147 (NCD)

Chapter 7

ADV 03-41543

vs.

**NOTICE OF TAKING DEPOSITION OF
TAMI LYNNE ATHENS**

Tami Lynne Athens,

Defendant,

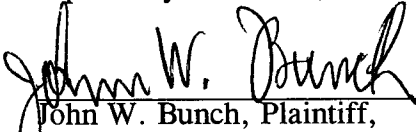
TO: Defendant above named, and her attorney, George W. Roberts, 1433 Utica Ave. So., Suite 240, Minneapolis, MN 55426

PLEASE TAKE NOTICE, that pursuant to Fed.R.Civ.P. 30, made applicable to these proceedings by Rule 7000, Fed.R.Bankr.P., the deposition of Tami Lynne Athens by oral examination will be taken before a qualified court reporter/notary public at the offices of Lanners & Olson, 12805 Highway 55, Suite 102, in the City of Plymouth, County of Hennepin, State of Minnesota on the 3rd day of May, 2004, at 1:00 pm and thereafter by adjournment until the same is completed.

You are directed to bring with you all documents listed in the attached *Subpoena*.

Dated: April 21, 2004

Respectfully submitted,


John W. Bunch, Plaintiff,
attorney pro se, I.D. No. 135,823
2705 Xanthus Ln.
Plymouth, MN 55447
763/476-1724

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United States Bankruptcy Court

DISTRICT OF MinnesotaIn re Tami Lynne Athens,
DebtorJohn W. Bunch,
Plaintiff
V.Tami Lynne Athens,
Defendant

SUBPOENA IN AN ADVERSARY PROCEEDING

Case No. BKY 03-41543Chapter 7Adv. Proc. No. ADV 03-4147To: Defendant Tami Lynne Athens, and her attorney
George W. Roberts, 1433 Utica Ave. So., Suite 240, Minneapolis, MN 55416☐ YOU ARE COMMANDED to appear in the United States Bankruptcy Court at the place, date, and time specified below to testify in the above adversary proceeding.

PLACE

COURTROOM

DATE AND TIME

☒ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above adversary proceeding.

PLACE

Lanners & Olson, PA.
12805 Highway 55, Suite 102
Plymouth, MN 55441

DATE AND TIME

May 3, 2004
1:00 pm.☒ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):

See Schedule A attached hereto.

PLACE

Lanners & Olson, PA.
12805 Highway 55, Suite 102
Plymouth, MN 55441

DATE AND TIME

May 3, 2004
1:00 pm.☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES

DATE AND TIME

Any subpoenaed organization not a party to this adversary proceeding shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify, Fed.R.Civ.P. 30(b)(6) made applicable in adversary proceedings by Rule 7030, Fed.R.Bankr.P.

ISSUING OFFICER'S SIGNATURE AND TITLE

John W. Bunch, attorney pro se. #195,823

DATE

April 21, 2004

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER

John W. Bunch, attorney pro se
2765 Xanthus Lane, Plymouth, MN 55447763/476-1724

PROOF OF SERVICE

	DATE	PLACE
SERVED	April 21, 2004	1433 Utica Ave. So, Suite 240, Minneapolis, MN.
SERVED ON (PRINT NAME)		MANNER OF SERVICE
George W. Roberts		certified mail, return receipt requested.
SERVED BY (PRINT NAME)		TITLE
Erin M. Bunch		process server

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on April 21, 2004
DATE


SIGNATURE OF SERVER

2705 Xanthus Lane
ADDRESS OF SERVER

Plymouth, MN 55447

Rule 45, Fed.R.Civ.P., Parts (c) & (d) made applicable in cases under the Bankruptcy Code by Rule 9016, Fed.R.Bankr.P.

(c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2)(A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3)(A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

- (i) fails to allow reasonable time for compliance;
- (ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in per-

son, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held, or

- (iii) requires disclosure of privileged or other protected matter and no exception or waiver applies, or
- (iv) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) DUTIES IN RESPONDING TO SUBPOENA.

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

**SCHEDULE A
(TAMI LYNNE ATHENS SUBPOENA)**

Definitions

As used in this Subpoena, the following words shall have the following meanings:

"Debtor" means Tami Lynne Athens.

Documents Requested

You are hereby requested to produce for inspection and copying all Documents in your possession, care, custody or control (or in the possession, care, custody or control of your attorneys, accountants, agents or employees) as follows:

1. Copies of Debtor's 2001 and 2002 federal and state income tax returns as filed, including W-2 and 1099 forms.
2. All books of account and records of PreSchool Plus, Inc. for the years 2001 and 2002.
3. All books of account and records of any other incorporated or unincorporated businesses owned and/or operated by Debtor within two years preceding 3/3/03.
4. All financial records and checking or savings account statements received by Debtor within two years preceding 3/3/03.
5. All documents referring or relating to Debtor's purchase of the property at 7825 Fairfield Road No., Brooklyn Park, Minnesota.
6. All documents referring or relating to Debtor's business relationship with Clark H. Ulysse, C Ulysse Productions, Inc., Adam Oreck or any company affiliated with either Clark Ulysse or Adam Oreck for the years 2001, 2002 and 2003.
7. Any and all credit applications submitted by Debtor within two years preceding 3/3/03.
8. All documents referring or relating to any insurance coverage purchased by Debtor within two years preceding 3/3/03.
9. All receipts for any money orders or travelers checks purchased by Debtor within two years preceding 3/3/03.
10. Copies of any and all CRP (ie; certificate of rent paid) forms received by Debtor for 2001 and 2002.

11. Copies of any M1PR property tax refund forms filed by Debtor for 2001 and 2002.
12. Copies (front and back) of any and all checks used by Debtor to make mortgage payments on 7825 Fairfield Ave. No. Brooklyn Park, Minnesota, between 6/02 and 3/03 inclusive.
13. Copies (front and back) of any and all checks used by Debtor to make the down payment on 7825 Fairfield Ave. No. Brooklyn Park, Minnesota.
14. Copies of any and all applications submitted by Debtor for energy assistance for the two years preceding 3/3/03.
15. Copy of Debtor's 2003 federal and state income tax returns as filed, including W-2 and 1099 forms.

sch.doc

John W. Bunch
2705 Xanthus Lane
Plymouth, MN 55447-1570

Tel. 763/476-1724

April 26, 2004

George W. Roberts, Esq.
1433 Utica Ave. So., Suite 240
Minneapolis, MN 55416

Re: John W. Bunch v. Tami L. Athens
U.S. Bankruptcy Court, District of Minnesota
ADV 03-4147
BKY 03-41543

Dear Mr. Roberts:

By way of follow up. I have still not received your responses to my outstanding interrogatories and document requests per the Court's Order of January 20, 2004, a copy of which is enclosed for your reference. Your responses were due January 30, 2004 and are long overdue.

Please forward your overdue responses immediately so that I can review them in anticipation of Ms. Athens' deposition next week.

If you have any questions about this, please give me a call.

Very truly yours,

John W. Bunch
Plaintiff, attorney pro se

JWB/yt
Enclosure
5630au.cor

7.

State of Minnesota

District Court

COUNTY

Hennepin

JUDICIAL DISTRICT

Fourth

CASE NO.

DC DJ 01-019487

FILED PSL

02 JAN 30 PM 1:29

John W. Bunch

2705 Xanthus Ln.

Plymouth, MN 55447

Plaintiff

BY

DEPUTY

HENNEPIN DISTRICT
COURT ADMINISTRATOR

City, State, Zip

VS.

Tami L. Athens

5308 Russell Ave. No.

Brooklyn Center, MN 55430

Defendant

Address

City, State, Zip

**ORDER FOR
DISCLOSURE**

**THIS IS AN OFFICIAL COURT ORDER WHICH REQUIRES YOU TO PROVIDE CERTAIN INFORMATION.
READ IT CAREFULLY.**

TO: Tami L. Athens

JUDGMENT DEBTOR

Within 10 days you must:

1. Fill out the attached Financial Disclosure Form describing your personal finances.
2. Mail this completed form to the JUDGMENT CREDITOR at the address stated in the box below.
(Note: unless the case began in conciliation court, certified mail is required. MS.550.011).

WARNING: IF YOU DO NOT COMPETE AND MAIL THE DISCLOSURE FORM TO THE JUDGMENT CREDITOR WITHIN 10 DAYS, THE JUDGMENT CREDITOR MAY ASK THIS COURT TO HOLD YOU IN "CIVIL CONTEMPT OF COURT." IF THE COURT DECIDES THAT YOU INTENTIONALLY DISOBEYED THIS ORDER, THE COURT MAY FINE YOU, PUT YOU IN JAIL, OR BOTH.

This order was issued because:

1. The JUDGMENT CREDITOR has won a Judgment in the lawsuit against you;
2. The Court Administrator recorded the Judgment in the official judgment docket more than thirty (30) days ago;
3. You have not paid the JUDGMENT CREDITOR all of the money which the Judgment says you owe; and
4. You and the JUDGMENT CREDITOR have not agreed to some other way to settle the debt you owe.

Mail the Financial Disclosure Form to:

John W. Bunch

JUDGMENT CREDITOR'S Name
2705 Xanthus Ln.

Address
Plymouth, MN 55447

City / State
952/897-5242 Zip

Telephone

BY THE COURT:

Mark Thompson

Court Administrator

Date

By

Deputy

Original for file

Yellow copy for Debtor (☐ mailed ☐ delivered on)

Pink copy for Creditor (☐ mailed ☐ delivered on)

READ REVERSE SIDE FOR IMPORTANT INSTRUCTIONS

(E.)

**SUMMARY OF EXEMPT PROPERTY (M.S. 510.02, 550.37)
EFFECTIVE 08-01-2000**

"Exempt property" means property or money which by law cannot be taken from you to pay a judgment or debt. This summary is provided to help you claim your exemptions on the Financial Disclosure Form. Most exemptions apply only to debtors who are individuals (not corporations). Because this is only a summary, you may find that a specific piece of your property or type of income is not covered. If you have any questions about whether something is exempt, seek legal advice.

PENALTIES: IF THE COURT FINDS THAT YOU CLAIMED AN EXEMPTION IN BAD FAITH, YOU MAY BE ASSESSED COSTS, REASONABLE ATTORNEYS' FEES AND AN AMOUNT NOT TO EXCEED \$100.00 (M.S. 550.135, SUBD. 12).

- 1. Homestead (residence owned and occupied by the debtor) is exempt to a value of \$200,000, or if used primarily for agricultural purposes, \$500,000:**
 - a. The Homestead may include up to 160 acres of land if located in a rural area. If located in the laid out or platted portion of a city, the exempt area cannot exceed one-half acre;
 - b. The proceeds of a sale of a homestead are exempt for one year after sale; does not apply to arrearages on child support and maintenance;
 - c. A mobile home that you live in as a home is exempt;
 - d. The Homestead exemption does not apply to mortgages, tax liens, mechanics liens and certain claims against an estate (See M.S. 510.05).
- 2. Wages and Earnings:**
 - a. All of your taxable earnings below forty (40) times the federal minimum wage (\$206.00 for a forty (40) hour week) or seventy-five percent (75%) of your after tax earnings, whichever is greater. For child support judgments, the exemption is either 35, 40, 45 or 50 percent of your after tax earnings, based on the date of judgment and other support obligations. (See M.S. 571.922) This money remains exempt for twenty (20) days after deposit in a bank or other financial institution;
 - b. Earnings of your minor child and any child support paid to you;
 - c. All of your earnings if you receive or have received public assistance based on need within the past six months, or if you have been an inmate of a correctional institution within the last six months. These funds remain exempt for sixty (60) days after deposit in a bank or other financial institution.
- 3. Business Assets (combined value of property in "a" and "b" not to exceed \$13,000):**
 - a. Farm equipment, livestock, produce and standing crops if your main occupation is farming, not exceeding \$13,000.00;
 - b. Tools, machines, office furniture and inventory reasonably necessary in your trade or business, not exceeding \$9,000.00.
 - c. (Builders) Proceeds of payments received by a person for improvements to real estate within meaning of M.S. 514.01
- 4. Various benefits, pensions and insurance:**
 - a. Relief based on need (this includes MFIP, MFIP-R, MFIP-S, Work First, General Assistance, Emergency General Assistance, General Assistance Medical Care, Supplemental Social Security Income, Medical Assistance, Minnesota Supplemental Assistance, Minnesota Supplemental Assistance Emergency Assistance and Energy Assistance);
 - b. Social Security benefits (Old Age, Survivors or Disability Insurance);
 - c. Unemployment Compensation, Workers' Compensation, Veterans' Benefits (remain exempt for one (1) year after receipt) and benefits payable for accident or disability;
 - d. A stock bonus, pension, Individual Retirement Account or annuity or similar plan or contract received on account of illness, disability, death, age or length of service to the extent your aggregate interest under all plans and contracts does not exceed a present value of \$54,000.00 plus an additional amount reasonably necessary for the support of the debtor or debtor's dependents. (Note: ERISA-qualified benefits are not exempt after disbursement or if withdrawn prior to retirement and exemptions in Paragraph "d" do not apply to support orders per M.S. 518.54, subd. 4a.);
 - e. Insurance money received by surviving spouse or child as a result of the death of spouse or parent, not exceeding \$36,000.00. Add \$9,000.00 for each additional dependent. Debtor's value in unmaturred life insurance contract not exceeding \$7,200.00;
 - f. Rights to sue for personal injury.
- 5. Personal Property (Note: Personal goods are not exempt from secured claims to collect the purchase price.)**
 - a. One motor vehicle not exceeding \$3,600.00 in value, or \$36,000.00 if the vehicle has been modified at a cost of not less than \$2,700.00 to accommodate a physical disability making a disabled person eligible for a handicap parking certificate under M.S. 169.345;
 - b. All money received on a claim on account of damage to or destruction of exempt property;
 - c. All wearing apparel, one watch, utensils and foodstuff without regard to value. Household furniture, appliances and furnishings not exceeding \$8,100.00;
 - d. A church pew and a burial plot.

STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT

John W. Bunch

Court File No. HC 01-0302512

Plaintiff,

vs.

**NOTICE OF TAKING DEPOSITION OF
TAMI L. ATHENS**

Clark H. Ulysse, and
Tami L. Athens

Defendants

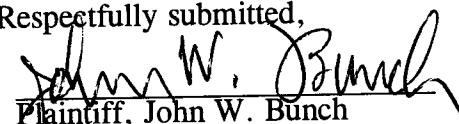
TO: DEFENDANTS, ABOVE NAMED, P.O. Box 290284, MINNEAPOLIS, MN 55429

PLEASE TAKE NOTICE, that the deposition of Tami L. Athens by oral examination will be taken before a qualified notary public at One Corporate Center, Suite 300, 7300 Metro Blvd. in the City of Edina, County of Hennepin, State of Minnesota on the 4th day of March, 2002, at 10:00 am and thereafter by adjournment until the same is completed.

You are directed to bring with you all documents listed in the *Subpoena Duces Tecum*.

Dated: February 25, 2002

Respectfully submitted,


Plaintiff, John W. Bunch
Judgment Creditor, attorney pro se
U.D. No. 135,823
2705 Xanthus Ln.
Plymouth, MN 55447
952/897-5242

JWB/ndep.doc

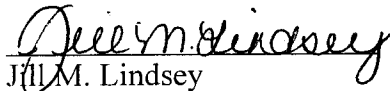
(F)

AFFIDAVIT OF SERVICE BY U.S. MAIL

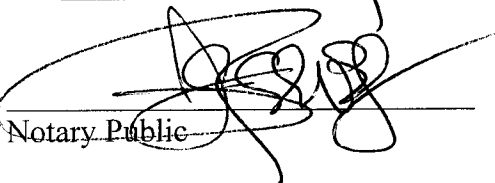
STATE OF MINNESOTA)
)SS.
COUNTY OF HENNEPIN)

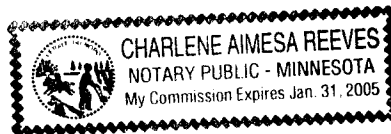
Jill M. Lindsey, of the City of Edina, County of Hennepin, in the State of Minnesota, being duly sworn, says that on the Twenty-Fifth day of February, 2002, she served a copy of the Notice of Taking Deposition of Tami L. Athens with regard to the John W. Bunch v. Clark H. Ulysse and Tami L. Athens, Court File No. HC 01-0302512 matter upon the following person by enclosing in an envelope, postage prepaid, and by depositing same in the post office at Edina, Minnesota, directed to said person at the following address:

Mr. Clark Ulysse
Ms. Tami Athens
P.O. Box 290284
Minneapolis, MN 55429


Jill M. Lindsey

Subscribed and sworn to before me
this 26th day of February, 2002.


Notary Public



STATE OF MINNESOTA
COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT
DIVISION

JOHN W BUNCH

vs

CLARK H ULYSSE, TAMI L ATHENS

Defendant.

Plaintiff,

BY

HENNEPIN COUNTY ADMINISTRATOR

FILED

02 JUL 30 PM

HOUSING COURT

DECISION & ORDER

ON MOTION

File No. 1010302512

This case was heard by the undersigned on **JULY 29, 2002.**

Plaintiff:

☒ Appeared in person Represented by: ☐ agent ☐ counsel
☐ Did not appear and is in default

Defendant:

☐ Appeared in person Represented by: ☐ advocate ☐ counsel
☒ Did not appear and is in default

The Defendant has ☐ admitted ☐ denied the allegations in the unlawful detainer complaint.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. ☐ **COMPLAINT:** Plaintiff proved the following allegations by a preponderance of the evidence.

- a. ☐ Compliance with MINNESOTA STATUTE § 504B.181
- b. ☐ Nonpayment of rent.
- c. ☐ Notice to vacate was properly given and Defendant(s) held over.
- d. ☐ Breach of lease by _____
- e. ☐ Other: _____

2. ☐ **DEFENSES:** Defendant(s) proved the following defenses by a preponderance of the evidence.

- a. ☐ Improper service by _____
- b. ☐ Violation of the covenants of habitability by _____
- c. ☐ Improper notice because _____
- d. ☐ Waiver of _____ by _____
- e. ☐ Other: _____

3. ☐ **SETTLEMENT:** The parties have reached a settlement, which is approved and incorporated in this Decision and Order. _____

- ☐ Settled through Mediation: See attached settlement agreement
- ☐ Settled by the Litigants: See attached settlement agreement

G.

ORDER

1. ☒ **JUDGMENT:** The Court Administrator shall enter judgment for Plaintiff for \$ 50 increased
- a. ☐ **PLAINTIFF** for recovery of the premises. The Writ of Recovery of Premises and Order to Vacate shall be:
- i. ☐ issued immediately
- ii. ☐ stayed until _____, 2002
- b. ☐ **DEFENDANT** to remain in possession of the premises.
- c. ☐ **COSTS AND DISBURSEMENTS** to the prevailing party.
2. ☐ **DISMISSAL:** The case is dismissed ☐ WITH ☐ WITHOUT prejudice.
3. ☐ **REDEMPTION:** Defendant may redeem the premise (for nonpayment of rent) by paying to the Plaintiff \$ _____ by _____, 2002. If not, a judgment & writ shall issue by default.
4. ☐ **RENT ABATEMENT:** Defendant has had diminished use and enjoyment of the premises. Rent is abated for the months of _____ by a total of \$ _____, and abated by \$ _____ per month until the first month following completion of court ordered repairs.
5. ☐ **RENT DISBURSEMENT:** The rent now on deposit with the Court shall be released as follows:
- ☐ \$ _____ to Plaintiff ☐ \$ _____ to Defendant
6. ☐ **HEARING: THIS IS SCHEDULED FOR** ☐ COURT TRIAL ☐ JURY TRIAL ☐ MOTION HEARING ON ISSUES OF _____ ON _____, 2002, AT _____ (AM/PM). BOTH PARTIES SHALL COME TO THE A-1700 GOVERNMENT CENTER (OR _____) FOR COURTROOM ASSIGNMENT.
7. ☒ **DISCOVERY:** The parties shall provide to each other by _____, 2002, the following: a list of witnesses, with phone numbers and addresses, and the subjects about which they will testify, and copies of exhibits (documents, photographs, etc.) to be introduced at trial, and _____
8. ☐ **RENT INTO COURT:** Defendant shall pay into Court the rent of \$ _____ in cash or certified funds payable to the Court Administrator, on or before _____ (AM/PM) on _____, 2002 and all future rent on the _____ day of each month until further Order of the Court, or the Court will issue a Writ of Recovery of Premises and Order to Vacate.
9. ☒ **OTHER:** Plaintiff's 7/25/02 Motion granted. Defendants' Answers dated 8/24/01 are incomplete, and the objections are overruled. Defendants shall serve complete signed and sworn answers to Plaintiff's interrogatories by 8/2/02. Failure to comply may result in citation for civil contempt of court.

RECOMMENDED BY:

Referee

Date

BY THE COURT:

Judge

Date

REQUEST FOR WRIT OF RECOVERY

By: _____

Date: _____, 2002

costs for 7/25/02 Motion.

State of Minnesota

District Court

COUNTY

Hennepin

JUDICIAL DISTRICT

Fourth

CASE NO.

AC-00-17087

Clark H. Ulysse and Tami L. Athens

Plaintiff

7825 Fairfield Rd. No.

Brooklyn Park, MN 55444

Address

City, State, Zip

vs.

John W. Bunch

2705 Xanthus Ln.

Plymouth, MN 55447

Defendant

Address

City, State, Zip

**ORDER FOR
DISCLOSURE**

**THIS IS AN OFFICIAL COURT ORDER WHICH REQUIRES YOU TO PROVIDE CERTAIN INFORMATION.
READ IT CAREFULLY.**

TO: TAMI L. ATHENS

JUDGMENT DEBTOR

Within 10 days you must:

1. Fill out the attached Financial Disclosure Form describing your personal finances.
2. Mail this completed form to the JUDGMENT CREDITOR at the address stated in the box below.
(Note: unless the case began in conciliation court, certified mail is required. MS.550.011).

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Mail the Financial Disclosure Form to:

John W. Bunch

JUDGMENT CREDITOR'S Name

2705 Xanthus Ln.

Address

Plymouth, MN 55447

City / State

55447-5242

Zip

Telephone

BY THE COURT:

Mark Thompson

Court Administrator

By

Deputy

11-13-02

Date

Original for file

Yellow copy for Debtor ☒ mailed ☐ delivered on 11-13-02

Pink copy for Creditor ☒ mailed ☐ delivered on 11-13-02

READ REVERSE SIDE FOR IMPORTANT INSTRUCTIONS

(4)

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EFFECTIVE 08-01-2000**

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- c. (Builders) Proceeds of payments received by a person for improvements to real estate within meaning of M.S. 514.01

4. Various benefits, pensions and insurance:

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- d. A stock bonus, pension, Individual Retirement Account or annuity or similar plan or contract received on account of illness, disability, death, age or length of service to the extent your aggregate interest under all plans and contracts does not exceed a present value of \$54,000.00 plus an additional amount reasonably necessary for the support of the debtor or debtor's dependents. (Note: ERISA-qualified benefits are not exempt after disbursement or if withdrawn prior to retirement and exemptions in Paragraph "d" do not apply to support orders per M.S. 518.54, subd. 4a.);
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- c. All wearing apparel, one watch, utensils and foodstuff without regard to value. Household furniture, appliances and furnishings not exceeding \$8,100.00;
- d. A church pew and a burial plot.

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re:

Case No. BKY 03-41543

Chapter 13 Case

Tami Lynne Athens,

Debtor.

**DEBTOR'S RESPONSE TO
OBJECTION TO CONFIRMATION
AND MOTION FOR CONVERSION
OF JOHN BUNCH**

1. Debtor, Tami L. Athens, by and through her undersigned attorney, makes the following response to the objection to confirmation and motion for conversion of case (the "Motion") filed by John W. Bunch ("Movant").

2. The Court will hold a hearing on the Motion on August 5, 2004, at 10:30 A.M., or as soon thereafter as counsel may be heard, in Courtroom 7 West, U.S. Courthouse, 300 South 4th Street, Minneapolis, MN.

3. Debtor hereby consents to a re-conversion of this case back to Chapter 7 of Title 11, United States Code.

WHEREFORE, the Debtor requests relief in accordance with Chapter 7 of the Bankruptcy Code and prays that this Court enter its Order re-converting this case to a case under Chapter 7 of Title 11, United States Code.

Dated: August 4, 2004

/e/ George W. Roberts
George W. Roberts #92186
1433 Utica Avenue South, #240
Minneapolis, MN 55416
Telephone: (952) 544-7676
Attorney for Debtor

Bky: AthensRspConv

(I.)

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Tami Lynne Athens

BKY 03-41543 (NCD)

Debtor,

Chapter 7

John W. Bunch

ADV 03-4147

Plaintiff

vs.

Tami Lynne Athens,

Defendant,

Unsworn Certificate of Proof of Service

I, John W. Bunch, declare under penalty of perjury that on September 8, 2004, I mailed copies of the attached Notice of Hearing and Motion For Sanctions, Memorandum in Support, Affidavit of John W. Bunch and exhibits, and Proposed Order by first class mail, postage prepaid, to each entity named below at the address stated below for each entity:

Tami Lynne Athens
P.O. Box 290284
Minneapolis, MN 55429

Debtor

George W. Roberts, Esq.
1433 Utica Ave. S., Suite 240
Minneapolis, MN 55416

Attorney for Debtor

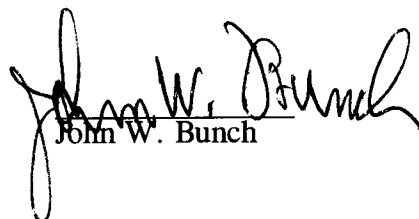
Julia Christians
120 S. 6th St., Ste. 2500
Minneapolis, MN 55402

Bankruptcy Trustee

U.S. Trustee
1015 U.S. Courthouse
300 S. 4th St.
Minneapolis, MN 55415

U.S. Trustee

Executed on September 8, 2004


John W. Bunch

John W. Bunch
2705 Xanthus Lane
Plymouth, MN 55447-1570

Tel. 763/476-1724

September 8, 2004

U.S. Bankruptcy Court
U.S. COURTHOUSE, Rm. 301
300 S. 4th St.
Minneapolis, MN 55415

Re: John W. Bunch v. Tami L. Athens
ADV 03-4147
BKY 03-41543

Dear Sir/madam:

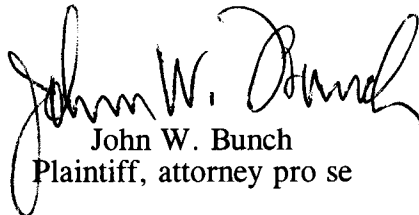
Enclosed for filing are the following:

- Notice of Hearing and Motion For Sanctions, etc.,
- Memorandum in Support of Plaintiff's Motion,
- Affidavit of John W. Bunch and Exhibits,
- Proposed Order, and
- Unsworn Certificate of Proof of Service.

Thank you for your assistance.

If you have any questions about this, please let me know.

Respectfully submitted,



John W. Bunch
Plaintiff, attorney pro se

JWB/yt
Enclosures
5630au.cor

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Tami Lynne Athens,

BKY 03-41543 (NCD)

Debtor.

Chapter 7

John W. Bunch,

ADV 03-4147

Plaintiff,

vs.

Tami Lynne Athens,

Defendant.

**PROPOSED
FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER**

At Minneapolis, Minnesota this _____ day of September, 2004.

John W. Bunch's motion for sanctions under Federal Rule of Bankruptcy Procedure 7037 came before the undersigned on September 22, 2004. John W. Bunch appeared pro se. George W. Roberts, Esq. appeared on behalf of Defendant. Based on the evidence, and all the files, records and proceedings herein, pursuant to Federal Rule of Bankruptcy Procedure 7052, following the close of evidence the court orally stated and recorded in open court its findings of fact and conclusions of law.

IT IS HEREBY ORDERED:

1. Plaintiff's motion for sanctions is GRANTED and default judgment shall be entered against Defendant pursuant to Federal Rule of Bankruptcy Procedure 7037(b)(2)(C).
2. Defendant's debt to Plaintiff is excepted from discharge under 11 U.S.C. 523(a)(2)(A).
3. Plaintiff is awarded \$ 375 for fees and costs.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Nancy C. Dreher
Judge of U.S. Bankruptcy Court